

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
C.A. No. 2012-00963

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OURWAY REALTY, LLC, d/b/a	)
PLAINRIDGE RACECOURSE,	)
	)
Plaintiff,	)
	)
v.	)
	)
THOMAS KEEN,	)
	)
Defendant.	)
	)

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AFFIDAVIT OF THOMAS KEEN

I, Thomas Keen, hereby depose and state as follows.

1. I am the defendant in the above-captioned action. I make this affidavit on my personal knowledge in support of my Special Motion to Dismiss under G.L. c. 231 § 59H.
2. I am a nine year resident of Plainville, Massachusetts, where I live with my wife, Jennifer, and two sons aged four and five. My eldest son will be starting his second year in Plainville's public schools in September. I am a Vice President at Fidelity Investments, working at its Smithfield, Rhode Island office. I hold an MBA from the Harvard Business School, and graduated with honors from Bucknell University.
3. On or about December 1, 2011, I became involved in local opposition to the \$1 billion casino proposed by New England Patriots owner Robert Kraft and Las Vegas developer Steve Wynn in the town of Foxborough, which neighbors Plainville. Through a community group called "No Foxboro Casino" founded by my sister-in-law, Stephanie Crimmins, I helped organize a rally, assisted in raising money, formulated arguments, maintained a website,

nofoxborocasino.com, managed email marketing, and organized the community against the proposal. In May 2012, the residents of Foxborough elected a slate of selectmen opposed to the Kraft/Wynn casino. As a result of the election, on information and belief, Kraft and Wynn have indefinitely suspended their casino plans.

4. My opposition to casino development stems in large part from my background in business analysis. I am deeply skeptical that the purported benefits of casinos – revenue sharing, tax receipts and jobs – will outweigh their economic and social cost, including the likelihood of business failure, the potential for increased crime, and the prospect of increased addiction to gambling. I am also concerned that a casino in my neighborhood will depress the value of area homes, including my own.

5. In late 2011, I became aware that the Plainridge Racecourse, a harness-racing facility a half-mile from my house, was seeking to install slot machines at its facility. On or about March 15, 2012, I and others opposed to the proposed slot parlor formed a group called No Plainville Racino, to organize opposition to the proposal.

6. On information and belief, the Plainridge Racecourse is owned by Ourway Realty, LLC. On or about March 21, 2012, I learned that the racecourse had delivered a letter to the Board of Selectmen of the Town of Plainville, asking it to engage in negotiations toward a “Host Community Agreement” under the Commonwealth’s new gaming law. Thereafter, the Board of Selectmen began considering whether to enter into such an agreement, and how best to negotiate it with the racetrack.

7. On March 24, 2012, I established a website for the No Plainville Racino group, called noplainvilleracino.com. A true and accurate printout of the website is attached to the Memorandum in Support of the Special Motion to Dismiss (the “Memo”), as Exhibit 1. I wrote

all the content contained on noplainvilleracino.com. In establishing the website, it was my intent to provide information to members of the Plainville community so that they could more effectively influence the Selectmen of the town to reject the proposal for a slot parlor. I also intended the website to be read by the Selectmen and other town officials.

8. On March 25, 2012, a person working with No Plainville Racino founded a “page” on Facebook, the social networking website. The Facebook page contains numerous links to articles and other materials of interest to people concerned about the potential Plainville racino. Any user of Facebook can post a comment on the Facebook page. A printout of the Facebook page is attached to the Memo as Exhibit 2.

9. In late March, 2012, members of No Plainville Racino submitted a Town Meeting petition, calling on voters to require the Board of Selectmen to engage in an independent cost-benefit analysis of the slot machine proposal. The petition asked the town:

to require the board of selectmen to obtain an independent cost-benefit analysis about the impact of a slot machine parlor on the residents of Plainville. This analysis would be obtained prior to and/or concurrent with negotiations for a host community agreement for a Class 2 gaming license in Plainville, and made public prior to any town-wide referendum on any Host Community Agreement.

(Exhibit 3). The petition was ultimately unsuccessful. Since the Town Meeting proposal, however, the Town of Plainville has continued discussions with the racetrack concerning the process for negotiating a Host Community Agreement and related matters, and No Plainville Racino has continued to object to proposal and organize opposition in the community. No Plainville Racino members, including myself, have also attended recent Board of Selectmen meetings to ask questions of both the Board of Selectmen and Ourway. Recently, members of No Plainville Racino, including myself, have met with town officials to offer input into a potential request for proposals for a consultant to advise the Town on this subject.

10. On March 28, 2012, at approximately 10:00 a.m., my house was burglarized, for the second time in six months. As a security precaution, I had installed a “webcam” in my home office that took pictures 24 hours a day. The webcam captured an image of the burglar, which I then provided to the Plainville Police Department. To the best of my understanding, the Plainville Police Department immediately opened an investigation into the burglary. The Plainville Police Department also posted the picture my webcam had taken to its Facebook page, along with the following message: “Fwd: B&E suspect. About 10am Pville rt.152. If u know this person, please msg us.” (Exhibit 4).

11. On March 28, an administrator of the No Plainville Racino Facebook page “shared” the photo my webcam had taken via the Facebook page of the Plainville Police Department. I am not an administrator of the No Plainville Racino Facebook page, and I did not myself “share” the photo. However, I have personal knowledge that a Facebook user who comes across a photograph or other item posted on the Facebook page of another person or entity may post the item to the page associated with the Facebook account under which she is logged in by clicking on a “share” button next to the item in question. The item will then be posted to that person or group’s Facebook page, along with any caption provided by the original poster, an indication that the item is “shared,” and an indication of its source. A copy of the “shared” picture, as it appeared on the No Plainville Racino Facebook page, is attached to the Memo as Exhibit 5.

12. At 1:01 p.m. on March 28, a Facebook user under the pseudonym “Buck Farack” posted the following comment under the picture: “I wonder if they checked over at the racetrack, lol.” I did not post this comment. (Exhibit 5).

13. On or about April 23, 2012, I received a demand letter from Ourway Realty, LLC concerning the website and Facebook page. (Exhibit 6). On April 25, 2012, the comment, "I wonder if they checked over at the racetrack, lol," was removed from the No Plainville Racino Facebook page by the person who posted it. On the same day, an attorney for the American Civil Liberties Union of Massachusetts sent a response to Ourway on my behalf, informing it that the comment had been removed. (Exhibit 7).

Signed under the pains and penalties of perjury this 20<sup>th</sup> day of July, 2012,

  
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Thomas Keen